

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division

ERICK ANTHONY SANTOS,

Petitioner,

v.

THE STATE OF VIRGINIA,

Respondent.

Case No. 2:23-cv-373

ORDER

Petitioner Erick Anthony Santos, an individual incarcerated in a Maryland prison, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging a detainer lodged by the Circuit Court for Henrico County, Virginia. ECF No. 1 at 1–2. The Court referred the matter to the Honorable Robert J. Krask for a report and recommendation, pursuant 28 U.S.C. § 636(b)(1)(B) and (C) and E.D. Va. Civ. R. 72.

The Report and Recommendation finds that the petitioner failed to exhaust his state-court remedies. ECF No. 29 at 7–10. Therefore, it recommends that the Court grant the Commonwealth of Virginia’s Motion to Dismiss (ECF No. 16), dismiss and deny without prejudice the Petition for a Writ of Habeas Corpus (ECF No. 1), and deny the petitioner’s Motion for Declaratory Judgment (ECF No. 10) and Request for Entry of Default (ECF No. 19).

Judge Krask advised the parties of their rights to object to his findings and recommendations and explained that failure to timely object would result in a waiver

of appeal from a judgment of this Court based on such findings and recommendations. ECF No. 29 at 11–12 (citing *Thomas v. Arn*, 474 U.S. 140 (1985); *Carr v. Hutto*, 737 F.2d 433 (4th Cir. 1984); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984)). The time to file an objection has expired, and neither party objected to the Report and Recommendation.

In the absence of a specific written objection, this Court may adopt a Magistrate Judge’s recommendations without conducting a *de novo* review, unless the recommendations are clearly erroneous or contrary to law. Fed. R. Civ. P. 72(b)(2); see *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982) (citations omitted); *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005).

The Court has reviewed Judge Krask’s findings and recommendations and finds no clear error. Accordingly, the Report and Recommendation (ECF No. 29) is **ADOPTED**.

Accordingly, the Commonwealth’s Motion to Dismiss (ECF No. 16) is **GRANTED**, the Petition for a Writ of Habeas Corpus (ECF No. 1) is **DISMISSED** and **DENIED WITHOUT PREJUDICE**, the petitioner’s Motion for Declaratory Judgment (ECF No. 10) is **DENIED**, and the Request for Entry of default (ECF No. 19) is likewise **DENIED**.

The petitioner failed to demonstrate a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003). Therefore, the Court declines to issue a certificate of appealability pursuant to Fed. R. App. Proc. 22(b).

The petitioner is **ADVISED** that because the Court has denied a certificate of appealability, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If the petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within 30 days from the date of this final order. The petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk is **DIRECTED** to send a copy of this Order to the petitioner and to counsel for the Commonwealth.

IT IS SO ORDERED.

/s/



Jamar K. Walker
United States District Judge

Norfolk, Virginia
September 20, 2024